

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
STEVEN SCHREIBER, :
:
Plaintiff, :
: 15-CV-6861 (CBA)
v. :
: August 30, 2018
EMIL FRIEDMAN, et al, : Brooklyn, New York
:
Defendants. :
:
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TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE JAMES ORENSTEIN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: JAY P. NELKIN, ESQ.
CAROL NELKIN, ESQ.
Nelkin & Nelkin
5417 Chaucer
Houston, Texas 77005

HILLEL IRA PARNESS, ESQ.
Parness Law Firm, PLLC
136 Madison Avenue, 6th Floor
New York, New York 10016

For the Defendant: PAUL H. SCHAFHAUSER, ESQ.
Chiesa Shahnian & Giantomasi PC
11 Times Square
New York, NY 10036

For E&I, et al.: DAVID GRANTZ, ESQ.
Meyner & Landis
One Gateway Center
Newark, New Jersey 07102

(Appearances continue on next page.)

Proceedings recorded by electronic sound recording,
transcript produced by transcription service

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3 APPEARANCES CONTINUED:

4

For Interested Party: NICHOLAS FASO, ESQ.
Cullen and Dykman LLP
99 Washington Avenue
Suite 2020
Albany, New York 12210

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8 Court Transcriber: SHARI RIEMER, CET-805
TypeWrite Word Processing Service
211 N. Milton Road
Saratoga Springs, New York 12866

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1 (Proceedings began at 11:05 a.m.)

2 **(MICROPHONES GO IN AND OUT DURING CONFERENCE)**

3 THE CLERK: Civil Cause for a Status Conference,
4 Schreiber v. Emil Friedman, et al., Docket Number 15-CV-6861.

5 Will the parties please state their appearances for
6 the record starting with the plaintiffs?

7 MR. NELKIN: Your Honor, I'm here today, Jay Nelkin
8 on behalf of Nelkin & Nelkin. I believe Mr. Parness is going
9 to be acting on behalf of the plaintiff in this case.

10 THE COURT: Good morning.

11 MR. PARNESS: Good morning, Your Honor. I'm sorry.

12 MS. NELKIN: Carol Nelkin on behalf of Nelkin &
13 Nelkin, Your Honor.

14 THE COURT: Good morning.

15 MR. PARNESS: Good morning, Your Honor. Hillel
16 Parness representing Eugene Schreiber, Two Rivers Coffee and
17 for purposes of the fee disputes Steven Schreiber, but it's
18 our position that the attorney-client relationship between the
19 Nelkins and Steven Schreiber remains intact.

20 THE COURT: All right. Good morning.

21 MR. SCHREIBER: Steven Schreiber.

22 MR. SCHREIBER: Eugene Schreiber.

23 THE COURT: Good morning.

24 MR. SCHAFHAUSER: Good morning, Your Honor. Paul
25 Schafhauser of Chiesa Shahinian & Giantomasi for the Friedman

1 defendants.

2 THE COURT: Good morning.

3 MR. SCHAFHAUSER: Good morning.

4 MR. GRANTZ: Good morning, Your Honor. David Grantz
5 from the law firm of Meyner & Landis on behalf of the E&J
6 defendants and the oil and trucking defendants.

7 THE COURT: Good morning.

8 MR. FASO: Good morning, Your Honor. Nicholas Faso,
9 Cullen & Dykman on behalf of non party Mayer Koenig.

10 THE COURT: Good morning. Okay, folks. You managed
11 to create a mess. I guess what I've got is a couple of
12 premotion conference requests. Before I get to that let me
13 just get a sense of the lay of the land for where we stand.

14 You guys all have a fee dispute. I get that.
15 Defendants, you guys want to stick with the settlement that is
16 not yet completed but that you had agreed on in principle;
17 right? You just want to put in your money and go.

18 MR. SCHAFHAUSER: Yes. Although it is completed in
19 the sense that everybody signed off on it already. It's
20 signed.

21 THE COURT: It's not consummated.

22 MR. SCHAFHAUSER: Did not consummated, exactly.

23 THE COURT: Okay. Sit down, please. You just want
24 to put your money in, go on your way and leave it to them to
25 fight it out.

1 MR. SCHAFHAUSER: That's correct, Your Honor.

2 THE COURT: Anybody have an objection to that?

3 MR. NELKIN: We have no objection to that. In the
4 letter that came in --

5 THE COURT: I just want -- no arguments. I really
6 just want to get a sense of where we stand. Have a seat,
7 please.

8 MR. NELKIN: Sure.

9 THE COURT: Mr. Faso.

10 MR. FASO: Your Honor, there are certain benefits
11 under the settlement agreement that are not subject to the
12 charging lien. Those benefits go to Mr. Koenig --

13 THE COURT: I just want to know if you have any
14 objection to defendants depositing money with the Court and
15 leaving everybody else to fight out what happens next and then
16 being out of the case.

17 MR. FASO: Only to the extent that that postpones
18 our funds that are supposed to be transferred to Mr. Koenig.

19 THE COURT: To the extent that they can be
20 transferred to Mr. Koenig we can work that out but what I'm
21 saying is do you or anyone else -- does anybody have any
22 objection to the defendants being out of the case once they
23 deposit money into the court?

24 MR. FASO: No, Your Honor.

25 THE COURT: Anybody? Yes?

1 MR. NELKIN: We don't but we just want to make it
2 clear that there's -- there are property and other assets
3 besides money that's being transferred as part of the
4 settlement and we would want to have it made clear that those
5 were restricted along with whatever funds --

6 THE COURT: Well, you guys all -- look, the reason
7 I'm asking this, and the mealy mouth responses don't help me
8 in the slightest, Mr. Nelkin. What I'm trying to find out is
9 whether we can cabin this to a dispute among the various
10 partners who will remain in Two Rivers, Two Rivers itself and
11 their lawyers, we can cabin it to them and let the defendants
12 out of the case pursuant to the signed settlement agreement.
13 Does anybody have a problem with that?

14 No? Because you told me in your letter, Mr.
15 Schafhauser, that you couldn't agree on that and I don't
16 know -- exactly know why.

17 MR. SCHAFHAUSER: There were nuances that I'm not
18 hearing today from counsel that I heard yesterday about -- I
19 think you heard a little bit from Mr. Nelkin about the fact
20 that it's not just money. It's other benefits and that I
21 think the Nelkin & Nelkin position at least as of yesterday at
22 4:30 was that those benefits could not be transferred because
23 that would affect the charging lien rights and --

24 THE COURT: So you're saying that it's not possible
25 to do it effectively; right?

1 MR. NELKIN: No, that's not what I'm saying, Your
2 Honor. I'm saying it is possible to do it effectively. It
3 just requires the appropriate language and stipulation to
4 insure that those assets --

5 THE COURT: Well, work it out then. Because one
6 thing that concerns me greatly is if this dispute, regardless
7 of who's responsible for it, is interfering with the ability
8 to consummate the settlement including by means of the
9 charging lien then it's one possible outcome, the resolution
10 would be that a finding that the assertion of the charging
11 lien as opposed to other remedies at counsel's disposal might
12 be viewed as a basis for the client to fire counsel for cause.
13 If you're interfering with their rights, if you're acting
14 contrary to their interest and if they fire you for cause then
15 of course you forfeit any fee and I'm sure that's not a result
16 anyone wants to see happen.

17 Though I'm trying to figure out a way that you can
18 resolve this on consent without anybody being unreasonable,
19 like refusing to pay expenses that they agreed to pay. Are
20 you listening, Mr. Schreiber?

21 MR. SCHREIBER: Yes, I am.

22 THE COURT: So if we can let the defendants out and
23 cabin this maybe we can work towards an agreement that doesn't
24 require excessive use of resources in litigation and that
25 leads to a reasonable result. Does anybody have a problem

1 with doing it that way?

2 MR. NELKIN: No problem here.

3 THE COURT: No, no, no?

4 MR. SCHAFHAUSER: We'd be delighted with that.

5 THE COURT: So I'm going to expect by Friday --
6 well, today is Thursday. By next Thursday, a week from today,
7 a stipulation that does exactly that.

8 Now, let's move on to -- excuse me.

9 [Pause in proceedings.]

10 THE COURT: Let's move on to the fight you're all
11 having. Why can't you resolve this? Why do you think I can
12 or should be doing?

13 MR. PARNES: Your Honor, just to be clear again I'm
14 here representing Two Rivers and the two Schreibers in the fee
15 dispute. I've already represented Two Rivers and Mr. Eugene
16 Schreiber as a non party. An issue --

17 THE COURT: Wait. Let's stop there.

18 MR. PARNES: Sure.

19 THE COURT: Mr. Schreiber, Steven and Eugene
20 Schreiber, who do you want to be your lawyer? I don't want to
21 hear both of them because you're at odds with Nelkin & Nelkin.

22 MR. SCHREIBER: We were having trouble dealing with
23 our attorneys and I was asking for help --

24 THE COURT: Are you prepared, Mr. Parnes, to step
25 in as counsel for both Mr. Schreibers going forward in all

1 respects?

2 MR. PARNESS: Is the court ordering me to do so,
3 Your Honor?

4 THE COURT: I'm not ordering you. I'm asking if
5 that's something that you're prepared to do and if that's
6 something that the Schreibers want to do because I think it's
7 untenable to have a situation where counsel of record and
8 clients are in a dispute.

9 MR. PARNESS: I understand, Your Honor, and part of
10 what I was going to talk to you about is that that has become
11 clear over the last few weeks when the clear conflict has
12 emerged during these discussions.

13 THE COURT: Do you seek to be relieved?

14 MR. NELKIN: Yes, Your Honor.

15 THE COURT: Do you have any objection to them being
16 relieved as your counsel?

17 MR. SCHREIBER: I do because they took the case on
18 contingency fees and Mr. Parness --

19 THE COURT: Do you want them to stay as your
20 counsel?

21 MR. SCHREIBER: I believe they have the duty to
22 represent my best interests. It's become clear they're not so
23 I --

24 THE COURT: Well, do you wish to discharge them for
25 cause?

1 MR. SCHREIBER: Then according to the retainer
2 agreement it says even if I discharge them with cause I still
3 owe them money. So I'm just --

4 THE COURT: I'm not -- I'm not sure that your
5 agreement would supercede New York law but we can discuss
6 that.

7 MR. SCHREIBER: If that's the case I believe that
8 [inaudible] was saying. This relation is contingency. This
9 one is hourly. So by me accepting him [inaudible].

10 THE COURT: Any reason why you guys shouldn't be
11 relieved and you can fight about whether it's for cause later?

12 MR. NELKIN: You can't -- I don't believe so, Your
13 Honor. I mean it's our position that the settlement is
14 actually binding and effective. So we --

15 THE COURT: Well, so ordered. To the extent that
16 it's predicated or the realignment of the party was predicated
17 on my being misinformed about what was going on I'm happy to
18 vacate it and go back to scratch on that.

19 Look, you guys are headed for a result that is going
20 to disappoint somebody greatly. Perhaps it's going to
21 disappoint a lot of people greatly. I'll be honest. I don't
22 think you want me to resolving this or the Court but if that's
23 what you insist on that's the road we're going to go down.
24 You'll be relieved. He'll step in. I'll decide whether the
25 Court should exercise ancillary jurisdiction over your

1 dispute. We'll take it from there. We'll set a schedule
2 unless you all want some time to try to work things out before
3 I take these steps.

4 MR. PARNESS: We've been trying, Your Honor,
5 including me personally before I officially stepped in
6 [inaudible] background. We reached impasse after impasse and
7 there wasn't [inaudible] work it out.

8 THE COURT: Can somebody walk me through exactly who
9 wants what and what you can't agree on?

10 MR. PARNESS: Sure, Your Honor. So the engagement
11 letter which is -- which we maintain is [inaudible] talks
12 about -- and I'll quote it for you.

13 THE COURT: Pause there. Is it between -- is
14 anybody else a signatory?

15 MR. PARNESS: So I'll explain, Your Honor. And I
16 have copies if you'd like. The engagement letter is addressed
17 to both Schreibers and signed by both Schreibers in
18 anticipation of bringing litigation against Friedman. As Your
19 Honor knows though, they only brought the litigation on behalf
20 of Steven Schreiber and throughout the case told you that
21 Eugene Schreiber was a non party. That's why I needed to be
22 brought in to represent him. He's a non party in the case
23 over and over again.

24 It's our view at the outset that this engagement
25 letter despite being signed by both of them is an engagement

1 of Steven Schreiber.

2 THE COURT: Oh, come on. Look, he signed the
3 letter. Just because they don't bring a suit on his behalf
4 doesn't mean they don't represent him. It means they're not
5 counsel of record for him in the case but he signed a
6 contract.

7 MR. PARNESS: I anticipated that argument with the
8 Nelkins and you've already [inaudible].

9 THE COURT: It's not an argument. It's a statement
10 of fact. He signed a contract; right?

11 MR. PARNESS: So --

12 THE COURT: He's a party to the contract. Is that
13 correct?

14 MR. PARNESS: He is a party to the contract. So
15 assuming that --

16 THE COURT: There's three --

17 MR. PARNESS: Assuming that conclusion -- I didn't
18 want to upset you.

19 THE COURT: You're not upsetting me but I do wish we
20 could dispense with the posturing.

21 MR. PARNESS: I'm not trying to posture, Your Honor.
22 One-third -- I'll [inaudible] the letter. Our firm will
23 receive one-third of the total recovery if any he receives
24 (including any phones, increased equity or other benefits) by
25 virtue of [inaudible]. So --

1 THE COURT: [Inaudible] Look, I'm not going to
2 [inaudible] at this point [inaudible] posture. I'm trying to
3 find out what it is you guys are arguing over.

4 MR. PARNES: Yes, sir.

5 THE COURT: The more you just tell me -- you start
6 to lard it up with well, here's the contract --

7 MR. PARNES: I'm not trying to lard it up.

8 THE COURT: And you'll stop interrupting. Mr.
9 Parnes, the more you do that the more you think you're trying
10 to sell me a bill of goods instead of just saying here's
11 what's the dispute is, dollars. Who doesn't want to pay
12 dollars, how many dollars.

13 MR. PARNES: Your Honor, the Nelkins want the
14 Schreibers to pay them \$2.75 million, at least that was our
15 last position. They may have [inaudible] different position.

16 THE COURT: They want who to pay?

17 MR. PARNES: They want -- well, they want to
18 receive \$2.75 million.

19 THE COURT: From whom, or they don't care?

20 MR. PARNES: Well, they -- that was part of the
21 problem, Your Honor, but in the settlement there's money
22 moving from this side to this side.

23 THE COURT: Right.

24 MR. PARNES: Cash [inaudible] approximately \$2.75
25 million, \$1 million of which approximately is going to Mr.

1 Koenig, \$1.75 of which is approximately going to the
2 Schreibers [inaudible] paid over to them plus an additional \$1
3 million paid out -- again, at our last discussion on this --
4 August 3rd is where we ended. Paid out over time.

5 THE COURT: Is it they want a third of the total
6 settlement going to your side of the V or they want a third of
7 what Steven and Eugene Schreiber get?

8 MR. PARNES: Well, that the dispute is over how to
9 value the settlement, Your Honor.

10 THE COURT: But it's clearly -- everybody agrees
11 that it's not a third of the entirety; it's a third of what
12 Steven and Eugene Schreiber get?

13 MR. NELKIN: Yes, Your Honor.

14 MR. PARNES: Yes.

15 THE COURT: So the question is how do you value
16 that.

17 MR. PARNES: Yes.

18 THE COURT: What do you say it's worth?

19 MR. PARNES: So we say that it is worth a lot less
20 than 2.75.

21 THE COURT: Wait. 2.75 is the third or the whole
22 thing?

23 MR. PARNES: 2.75 is the third in Nelkin's view
24 because they view the entire settlement as 8.25.

25 THE COURT: Okay.

1 MR. PARNES: The way they get there is by
2 [inaudible] up a lot of things that are transferred back and
3 forth including the equity, including the relief from a loan,
4 including a lease. They're even claiming rights to the shares
5 they already own, not even the new shares that are it but the
6 shares they already own. They're claiming the salary they
7 received over the last three years is entirely [inaudible]
8 Nelkins and the work. We dispute all those things.

9 We have a valuation of the company, which I think
10 will be very helpful, that was commissioned by Nelkin paid for
11 by Schreiber putting the company without debt and there is
12 debt, but even without debt putting the company at \$1.9
13 million. That would help us value the equity. The cash is
14 easy and the rest of things we should go through one by one.
15 We do not think they're worth anything close to what the
16 Nelkins ascribe value to. For example, the \$8 million loan
17 that is being relieved Your Honor knows from the beginning of
18 the case it was the view of this side of the table it was a
19 sham loan to begin with and now it's being brought back
20 against the Schreibers --

21 THE COURT: Do you guys say that that's worth 8
22 million?

23 MR. NELKIN: Yes, Your Honor, and it's --

24 THE COURT: Have a seat.

25 MR. PARNES: There's a lease --

1 THE COURT: Really? You really think that? Because
2 I will tell you that I may have to recuse myself and be a
3 witness at a hearing having heard you say otherwise but maybe
4 I'm misrecollecting or maybe you just misspoke. Are you
5 really taking the position that you think it's worth 8
6 million?

7 MR. NELKIN: First off, that loan is being
8 transferred --

9 THE COURT: Is that your position, that you think
10 that it's worth 8 million?

11 MR. NELKIN: I think that the value to the company
12 is it's being --

13 THE COURT: Mr. Nelkin, if I ask you a question I
14 want an answer to that question. Don't talk around it.

15 MR. NELKIN: Yes.

16 THE COURT: Have you said something precisely the
17 opposite in the past.

18 MR. NELKIN: Your Honor, we --

19 THE COURT: Have you?

20 MR. NELKIN: I don't believe so, Your Honor. I
21 believe --

22 THE COURT: Okay. That tells me a lot. Have a
23 seat.

24 Before you go further, they told me that there are
25 bills due for expenses that haven't been paid. Is that

1 correct?

2 MR. NELKIN: That is correct, Your Honor.

3 THE COURT: When will they be paid?

4 MR. PARNES: Well, they will be paid as soon as the
5 Court tells us to, Your Honor.

6 THE COURT: Today. How about that?

7 MR. PARNES: We need itemized bills. We don't have
8 them.

9 THE COURT: Give them the itemized bills today. Pay
10 it by Tuesday. Okay? Guys, I'm trying to help you work it
11 out but --

12 MR. PARNES: I understand. As part of -- in our
13 settlement discussions there was discussion of who was paying
14 those [inaudible].

15 THE COURT: I want to be clear. None of this is an
16 order. I'm not in a position to issue orders but my goodness,
17 if you want to work this out and not take great risks both
18 with the ultimate outcome and with the view that I will have
19 to form at some point as to your credibility and good faith
20 these are suggestions.

21 MR. PARNES: There's one thing I want to bring to
22 the Court's attention which might be an alternative path to
23 get through all this which is back in March of this year even
24 after the parties had agreed on the grand contours of this
25 agreement there was a different settlement offer put forward

1 by Friedman for \$4 million to settle the entire case and in
2 that he would get the Schreibers' shares and it would go over
3 there. The Schreibers wanted their counsel to push forward on
4 that offer, get maybe a little bit more than 4 million and
5 what my clients are prepared to say [inaudible] is that Nelkin
6 has told them they couldn't do it because Nelkin needed to
7 [inaudible].

8 If that all cash offer from Friedman to Schreiber in
9 the area of 4 million, perhaps a little bit more taking into
10 account Mr. Koenig now were still on the table, we would be
11 very interested in talking about it.

12 THE COURT: I can't talk [sic] you guys from
13 talking. Stop you guys from talking. I'm not going to try to
14 but it's not before me.

15 MR. PARNES: Understood. I just want to --

16 THE COURT: I will tell you I encourage all of you
17 to settle this however you want to do it whether it's a new
18 agreement with the defendants if they're interested in
19 talking. I don't know why they would be. Or if it's just
20 something among yourselves. That's fine. But -- but, given
21 the experiences I have had with all of you in terms of the
22 reliability of what you say you will do and how you're willing
23 to settle a case and what people have agreed to -- only to
24 find out later they have not -- I am not so sure that I can
25 really add any value to any discussions among you cause I have

1 at the minimum lost faith in my ability to understand what you
2 mean when you say something. All of you.

3 So I encourage you to work it out but please don't
4 count on me to help you nor should you assume that once the
5 defendants have deposited their money or whatever else they're
6 going to do as a security to cover the settlement the Court is
7 going to choose to exercise ancillary jurisdiction over this
8 mess of a dispute. You may have to take that elsewhere.

9 MR. PARNES: Understood, Your Honor.

10 THE COURT: So I'm going to suggest this. I'm open
11 to other ideas. Take a week. Come back to me and the Court
12 whether there is a -- first of all, give me the stipulation
13 that gets the defendants out of the case and preserves your
14 disputes and tell me if you would like some more time to
15 settle it among yourselves, if you have a proposed settlement
16 among yourselves or if you want to tell me exactly what
17 motions need to be made.

18 Does anybody want to be heard on that suggestion?

19 MR. PARNES: Your suggestion sounds good to us,
20 Your Honor.

21 THE COURT: Anyone else? No? Let's have a date in
22 two weeks to see where we stand.

23 [Pause in proceedings.]

24 THE COURT: We're going to run into the holidays.

25 THE CLERK: Do you want to do Wednesday, September

1 26th at 3:00?

2 THE COURT: Anyone have a problem with that date and
3 time? No?

4 MR. PARNESS: Your Honor, one second. I apologize.

5 [Pause in proceedings.]

6 MR. PARNESS: That's fine with us, Your Honor.

7 THE COURT: Good. See you all then. I wish you the
8 best of luck in working this out. Have a good day everybody.

9 MR. PARNESS: What was the time on the 26th, Your
10 Honor?

11 MR. NELKIN: 3:00.

12 (Proceedings concluded at 11:27 a.m.)

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1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the above-
3 entitled matter.

A handwritten signature in black ink, appearing to read 'Shari Riemer', is positioned above a horizontal line.

6 Shari Riemer, CET-805

7 Dated: September 6, 2018

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